FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

C. A. F. No. 2962 of 2005 in FAST No. 39576 of 2001

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar' ɷrders. Court' ɷr Judge' ɷrders

Mrs. N.V. Masurkar & Y. R. Misra for applicants
H.S. Khokhawala i/b. Nankani & Associates for respondents.

CORAM: **R.M.S. KHANDEPARKAR**
&
MRS. ROSHAN DALVI, JJ.
DATE:07/03/2006

P.C.:

Heard advocates for the parties. Placing reliance in the decision of the Apex Court in the case of State of Nagaland vs. Lipok AO., reported in 2005 AIR SCW 1748, the learned advocate for the applicant submitted that considering the facts disclosed in the application sufficient cause is made out for delay of 202 days in filing the appeal. He further submitted that considering the fact that the matter relates to the revenue certain latitude is expected to be shown in favour of the Government in relation to the application for condonation of delay. On the other hand the

learned advocate for the respondent has submitted that the application nowhere discloses any cause for condonation of delay of 202 days.

Undisputedly the appeal has been filed against the order of the Appellate Authority for having set aside the the order passed by the adjudicating authority. The order of the adjudicating authority was in relation to the show cause notice issued to the parties for contravention of the provisions of section 18(2) read with section 68 of the Foreign Exchange Regulation Act, 1973. The adjudicating authority by the order of 29th November 1985, had imposed a penalty of Rs.7 lakhs for contravention of the provisions of section 18(2) of the said Act, in addition to Rs.1 lakh against Shri Radha Kishan Agarwal for contravention of provisions of section 18(2) and section 68 of the said Act. The same order was set aside by the Appellate Authority and hence the appeal. Obviously the issue sought to be raised in the appeal relates to revenue to the Government.

The application for condonation of delay undoubtedly refers to the movement of file relating to the appeal which was proposed to be filed against the impugned order. Bearing in mind that the appeal has been filed by the Government and considering the fact

that the movement of files in the Government department, particularly relating to the filing of the appeal do not move with the required pace, either on account of the lethargy on the part of the Government employees or on account of various other factors including possible connivance of the Government employees with the defaulters in payment of the Government revenue, the narration of the facts in the application cannot be said to be disclosing sufficient cause for condonation of delay. Undoubtedly it apparently discloses negligence on the part of the Government employees in taking prompt steps for filing the appeal, within the period of limitation. However, the Apex Court in State of Nagaland's case (supra), wherein there was a delay of 57 days in filing the appeal against the acquittal of the accused persons had held as under:

“The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction vested in the Court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one

cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels. It is axiomatic that decisions are taken by officers / agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red- tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression ' usfficient cause' should, therefore, be considered with pragmatism in justice – oriented approach rather than the technical detection of sufficient cause for explaining every day' sdelay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice – oriented process. The State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured

while State is an impersonal machinery working through its officers or servants."

Taking into consideration the law laid down by the Apex Court in the State of Nagaland's case (supra) and considering the application for condonation of delay, the delay in filing the appeal needs to be condoned, ofcourse with costs. Needless to say that the costs imposed shall be initially paid by the appellant to the respondent, but liberty to the appellant to fix the responsibility for reimbursement of such costs to the Government and identify the officer/s responsible for delay in filing the appeal and to recover the costs from the concerned officer/s.

Application allowed in terms of prayer clause 9(a) subject to payment of costs of Rs.2000/- to be paid to the respondent within 4 weeks from today.

(MRS. ROSHAN DALVI J.) **(R.M.S.KHANDEPARKAR J)**